

AUG 01 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

RAJINDER SINGH,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74679

Agency No. A76-456-339

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Rajinder Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen for ineffective assistance of counsel. We have jurisdiction pursuant to 8 U.S.C.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1252. We review for abuse of discretion, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002), and deny the petition for review.

A motion to reopen before the BIA must be filed within 90 days of the final administrative decision. *See* 8 C.F.R. § 1003.2(c)(2) (noting exceptions not relevant here). This deadline may be equitably tolled “during periods when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence.” *Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003). Singh filed his motion to reopen more than one year after the BIA’s decision and more than five years after the alleged ineffective assistance of counsel took place. Accordingly, the BIA did not abuse its discretion in denying Singh’s motion to reopen as untimely because he did not act with due diligence.

PETITION FOR REVIEW DENIED.